REMARKS/ARGUMENTS

Claims 13 - 20 remain in this application.

Claims 1 - 12 have been withdrawn.

Claim renumbering: The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. Misnumbered claims 13(second occurrence)-19 have been renumbered as 14-20, respectively.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-7, drawn to an intra-operative method for essentially eliminating post-operative pain associated with a surgical procedure comprising the steps set forth in claims 1-7, classified in class 514, subclasses 537,649.

II. Claims 8-12, drawn to a kit for carrying out an intra-operative method for essentially eliminating pain associated with a surgical procedure comprising; a combination of ingredients including an injectable anesthetic, epinephrine, sodium chloride and an injectable anti-inflammatory agent calculated for specific patient weights; and a means for administering said medicated

solution to a surgical field, said means comprising a hollow shaft spinal needle, classified in class 435, subclasses 975, 810.

III. Claims 13-20, drawn to an intra-operative method for essentially eliminating pain associated with a surgical procedure performed in a patient weighing less than 160 pounds comprising the steps set forth in claims 13-20, classified in class 514, subclass 570.

The Examiner states that the inventions are distinct, each from the other because of the following reasons: Inventions Group II and Groups I & III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. In the instant case the product as claimed can be used in a materially different process of using that product because the product as claimed can be used to treat anaphylaxis.

Inventions Group I and Group III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the

instant case, the different inventions have different modes of operations because Group III is related to employment requiring the specific order of the steps set forth in the claims 13-20 while Group I is related to requiring no specific steps.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

The Applicant elects Group III without traverse, Claims 13-20, drawn to an intra-operative method for essentially eliminating pain associated with a surgical procedure performed in a patient weighing less than 160 pounds comprising the steps set forth in claims 13-20, classified in class 514, subclass 570 (and over 160 pounds as set forth in Claim 17).

It is respectfully submitted that in the event of rejoinder, the requirement for restriction between the the process claims be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Since the examiner has required restriction between process claims, and wherein applicant has elected claims directed to the process dependent upon weight, if the process claims are subsequently

found allowable, it is requested that withdrawn process claims that depend from or otherwise require all the limitations of the allowable process claim be considered for rejoinder. In the event any claims directed to a non-elected process invention are not commensurate in scope with an allowable process kit claim, it is hereby requested that the Examiner contact Applicant's representative to facilitate an Examiner's amendment so as to enable the kit process invention to be rejoined.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,

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